

NOV 16 2005**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ALBERT M. KUN, Esq.,

Petitioner,

v.

COMMISSIONER OF INTERNAL
REVENUE,

Respondent.

No. 04-76629

Tax Ct. No. 16979-02L

MEMORANDUM^{*}

Appeal from a Decision of the
United States Tax Court

Submitted November 8, 2005^{**}

Before: WALLACE, LEAVY, and BERZON, Circuit Judges.

Albert M. Kun appeals pro se from the Tax Court's decision for the Commissioner of Internal Revenue ("CIR") on Kun's petition challenging the notice of determination for tax years 1995 through 1999. We have jurisdiction pursuant to 26 U.S.C. § 7482. We review decisions of the Tax Court under the

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

same standard as civil bench trials in district court. *Milenbach v. Comm'r*, 318 F.3d 924, 930 (9th Cir. 2003). Accordingly, we review de novo a Tax Court's conclusions of law. *Boyd Gaming Corp. v. Comm'r*, 177 F.3d 1096, 1098 (9th Cir. 1999). We review for abuse of discretion the decision to quash a subpoena, *Mattel, Inc. v. Walking Mountain Prod.*, 353 F.3d 792, 813 (9th Cir. 2003), and to deny a continuance, *Danjac LLC v. Sony Corp.*, 263 F.3d 942, 961 (9th Cir. 2001). We affirm.

The Tax Court properly sustained the deficiency determination based on Forms 4340 for the years in question. *See Hansen v. United States*, 7 F.3d 137, 138 (9th Cir. 1993) (per curiam) (holding that, in the absence of contrary evidence, a Form 4340 is probative evidence in and of itself that notices and assessments were properly made).

The Tax Court did not err in rejecting Kun's contentions that the appeals officer violated the applicable procedures in rejecting Kun's offer-in-compromise. *See* 26 U.S.C. § 7122 (establishing basic guidelines for officers to consider while determining whether an offer-in-compromise should be accepted).

The Tax Court did not abuse its discretion by quashing the subpoena for supervisor Medeiros, because Medeiros was not at Kun's collection due process hearing and so could not provide relevant testimony regarding the hearing. *See*

Konop v. Hawaiian Airlines, Inc., 302 F.3d 868, 886 (9th Cir. 2002); *see also* *Estate of Nail v. Comm’r*, 59 T.C. 187, 189 (1972) (quashing subpoena for lack of relevance). Nor did the Tax Court abuse its discretion by quashing the subpoena for appeals officer Wong, because Wong gave a detailed explanation for rejecting Kun’s offer-in-compromise in the notice of determination. *See Konop*, 302 F.3d at 886.

Because Kun cannot show that he was prejudiced by Wong and Medeiros’ absence at trial, there was no abuse of discretion in denying a continuance. *See Danjac LLC*, 263 F.3d at 961.

AFFIRMED.